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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VALFRÉ, LLC, a California Limited Liability Company,

Plaintiff,

v.

RUE21, INC., a Delaware Corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT;
3. COMMON LAW UNFAIR COMPETITION
4. VIOLATION OF 17 U.S.C. §1202

Jury Trial Demanded

Plaintiff, by and through its undersigned attorneys, hereby prays to this honorable Court for relief and remedy based on the following:

INTRODUCTION

Valfré is a fashion and design company that creates unique and eclectic clothing pieces, accessories, and stationery items. Valfré's designs are witty and original, which provides an advantage in a highly competitive marketplace. Rue 21 is a retailer that developed, distributed, marketed, and sold products that incorporate without permission original Valfré designs. This is an action for copyright infringement.

JURISDICTION AND VENUE

1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101 *et seq*., and California Business and Professions Code Sections 17200 *et seq.*

2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and § 1338 (a) and (b), and ancillary jurisdiction over the attendant claims.

3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

4. VALFRE, LLC ("VALFRE") is a California limited liability company.

5. Plaintiff is informed and believes and thereon alleges that Defendant RUE21, INC. ("RUE21"), is a corporation organized and existing under the laws of the state of Delaware, and is doing business in and with the state of California.

6. Plaintiff is informed and believes and thereon alleges that some Defendants, DOES 1 through 3, inclusive, are manufacturers and/or vendors of accessories, which have manufactured and/or supplied and are manufacturing and/or supplying accessories comprised of Plaintiff's proprietary designs (as hereinafter defined) without Plaintiff's knowledge or consent or have contributed to said infringement. The true names, whether corporate, individual or otherwise of Defendants DOES 1 through 3, inclusive, are presently unknown to Plaintiff, which therefore sues said

Defendants by such fictitious names and will seek leave to amend this complaint to show their true names and capacities when same have been ascertained.

7. Defendants DOES 4 through 10, inclusive, are other parties not yet identified who have infringed Plaintiff's copyrights, have contributed to the infringement of Plaintiff's copyrights, or have engaged in one or more of the wrongful practices alleged herein. The true names, whether corporate, individual or otherwise, of Defendants 4 through 10, inclusive, are presently unknown to Plaintiff, which therefore sues said Defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained.

8. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

CLAIMS RELATED TO 100% BOYS' TEARS DESIGN

9. Plaintiff created a certain design, depicted below, which is titled "100% Boys' Tears" ("Subject Design A"). VALFRE registered Subject Design A with United States Copyright Office.

10. VALFRE offered Subject Design A for sale to the public before the acts alleged herein. VALFRE currently offers the design on several different products, and though the material and product type varies slightly among those, the design remains substantially the same with regard to the total image and overall appearance,

reflected in such features as the size, shape and colors of the design, as well as the selection, sizing, shape, array, spatial design, text, and orientation and arrangement of its design elements.

Subject Design A:

100%
BOYS
TEARS
GLUTEN FREE
DAIRY FREE
Valfré

11.Plaintiff owns in exclusivity the copyrights related to Subject Design A, as well as all attendant reproduction, adaptation, importation, marketing, and distribution rights.

12.The design and ornamentation of Subject Design A, including without limitation the total image and overall appearance reflected in such features as the size, shape and colors of the design, as well as the selection, sizing, shape, array, spatial design, orientation and arrangement of its design elements, as well as the text, are distinctive and original to the author.

DEFENDANTS' INFRINGING CONDUCT

13. Defendants, and each of them, were and are manufacturing, purchasing, distributing, importing, advertising, and selling for profit accessories that are at least substantially similar to, and infringe VALFRE's rights in, Subject Design A (hereinafter "Infringing Design").

14. Depicted below is a true and correct comparison of Subject Design A and the Infringing Design sold by Defendants, and each of them.

SUBJECT DESIGN A	INFRINGING DESIGN A
100% BOYS TEARS GLUTEN FREE DAIRY FREE	Stereo Earbuds PURE BOYS TEARS

15. Plaintiff is informed and believes and thereon alleges that the Infringing Design was manufactured, developed, imported, marketed, sold, and distributed by RUE21 and/or DOE Defendants.

16. Plaintiff is informed and believes and thereon alleges that RUE21 and/or DOE Defendants, purchased and/or obtained the Infringing Design from DOE Defendants, and then distributed, advertised, and/or sold the Infringing Design to their customers.

17. Upon information and belief, the Infringing Design has been widely promoted, marketed, offered for sale, sold and distributed throughout the United States, including within this district.

18. Upon information and belief, the activities of Defendants complained of herein are continuing, and constitute willful and intentional infringement of Plaintiff's copyright and are in total disregard of Plaintiff's rights.

19. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization, Defendants, and each of them, procured, purchased, sold, manufactured, caused to be manufactured, imported and/or distributed accessories comprised of designs which are identical to, or substantially similar to, Subject Design A, and did so willfully, with knowledge that the Subject Design A was subject to VALFRE's copyright, and with knowledge that their knock-off products were infringing.

20. The use by Defendants of the Infringing Design in connection with the sale of accessories has been without the consent of Plaintiff.

21. Plaintiff has no adequate remedy at law and is suffering irreparable harm and damage as a result of acts of the Defendants in an amount thus far not determined, but in excess of the jurisdictional minimum of this Court.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement - Against All Defendants, and Each)

22. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs, inclusive, of this Complaint.

23. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to Plaintiff's designs, including, without limitation, Subject Design A, including, without limitation, directly through VALFRE and/or its affiliates and/or through (a) access to Plaintiff's on-line website; (b) access to widely circulated magazines that featured Plaintiff's designs (c) access to illegally distributed copies of Plaintiff's designs by third-party vendors and/or DOE Defendants, including without limitation international and/or overseas manufacturers; (d) access to the Plaintiff's designs as sold at retail or on-line retail stores and; (e) access to the Plaintiff's designs as displayed by Plaintiff, and Plaintiff's customers and affiliates, at fashion industry tradeshows.

24. Plaintiff is informed and believes and thereon alleges that one or more of the Defendants manufactures accessories and/or is an accessories vendor. Plaintiff is further informed and believes and thereon alleges that said Defendant(s) has an ongoing business relationship with other Defendants and supplied accessories to other Defendants, which accessories infringed Subject Design A, in that said accessories were composed of a design that was identical or substantially similar to Subject Design A.

25. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyrights by procuring, creating, making and/or developing directly infringing and/or derivative works from Plaintiff's designs, including without limitation Subject Design A, and by importing, producing, distributing and/or selling infringing accessories through a nationwide network of customers, retail stores, catalogues and through on-line websites. This conduct violated Plaintiff's exclusive rights in Subject Design A.

26. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its business in an amount to be established at trial.

27. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

28. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of Subject Design A. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of Subject Design A in an amount to be established at trial.

29. Plaintiff is informed and believes and thereon alleges that Defendants, and each, infringed Plaintiff's copyrights with knowledge that Plaintiff owned the exclusive rights in Subject Design A, and that Defendants' acts described herein

constituted infringement, and/or that Defendants, and each, were reckless in committing the infringement alleged herein. Per the above, Defendants' acts of copyright infringement as alleged above were, and continue to be, willful, intentional and malicious, subjecting Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars ($150,000) per infringement, and/or to being precluded from claiming certain cost deductions from their disgorgeable profits and from asserting certain affirmative defenses.

SECOND CLAIM FOR RELIEF

(For Vicarious and/or Contributory Copyright Infringement - Against All Defendants, and Each)

30. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs, inclusive, of this Complaint.

31. Plaintiff is informed and believes and thereon alleges that Defendants knowingly induced, participated in, aided and abetted in and profited from the illegal reproduction and/or subsequent sales of accessories featuring Subject Design A as alleged hereinabove.

32. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

33. By reason of the Defendants', and each of their, acts of contributory infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its business in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

34. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of Subject Design A. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of Subject Design A, in an amount to be established at trial.

35. Plaintiff is informed and believes and thereon alleges that Defendants, and each, infringed Plaintiff's copyrights with knowledge that Plaintiff owned the exclusive rights in Subject Design A, and that Defendants' acts described herein constituted infringement, and/or that Defendants, and each, were reckless in committing the infringement alleged herein. Per the above, Defendants' acts of copyright infringement as alleged above were, and continue to be, willful, intentional and malicious, subjecting Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars ($150,000) per infringement, and/or to being precluded from claiming certain cost deductions from their disgorgeable profits and from asserting certain affirmative defenses.

THIRD CLAIM FOR RELIEF

(Common Law Unfair Competition – Against All Defendants, and Each)

36. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs, inclusive, of this Complaint.

37. Defendants' conduct as alleged herein, including their unlawful replication and imitation of the look and feel of VALFRE's design, particularly VALFRE's iPhone cases bearing Subject Design A, was calculated to deceive or confuse the public and to profit Defendants unjustly from the goodwill and reputation of

Plaintiff. Defendants' actions constitute unfair competition under the laws of the State of California.

38. As a direct and proximate result of Defendants' unfair competition, Plaintiff has incurred and continues to incur substantial damages in an amount to be established at trial.

39. As a direct and proximate result of the willful and wanton actions and conduct of Defendants, Plaintiff has been injured and will continue to suffer irreparable injury to its business and reputation unless Defendants are restrained by this Court from unfairly competing with Plaintiff.

40. Plaintiff has no adequate remedy at law.

41. In doing the acts alleged herein, Defendants acted with oppression, fraud and malice, and in willful and conscious disregard of the rights of Plaintiff, so as to entitle Plaintiff to exemplary and punitive damages in an amount to be established at trial.

FOURTH CLAIM FOR RELIEF

(Violation of 17 U.S.C. §1202 – Against All Defendants, and Each)

42.Plaintiff repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this complaint.

43. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, violated 17 U.S.C. §1202 et seq. by intentionally removing Plaintiff's attribution and copyright management information from the products at issue and/or altering the attribution and copyright management information on said works to reflect that a party other than Plaintiff authored or owned the works. Defendants, and each of them, engaged in the above acts in creating the infringing works at issue in this case, and then distributed the mislabeled and misattributed copies of these works to the public.

44.Defendants, and each of them, removed and/or altered the attribution and copyright management information and distributed the mislabeled and misattributed copies with knowledge that the copyright management information had been removed or altered without authority of the copyright owner or the law, and distributed and publicly displayed the infringing copies knowing that the copyright management information had been removed or altered without authority of the copyright owner or the law, and knowing, or, with respect to civil remedies under § 1203, having reasonable grounds to know, that the conduct would induce, enable, facilitate, or conceal an infringement of certain rights under this title. In addition, certain of the infringing copies included alterations and manipulations by Defendants, and each of them, that appear to attribute or associate one or more of the Subject Works to Rue 21. These acts further violate §1202.

45. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, knowingly removed and altered the copyright management information on the infringing copies. Review of the product images set forth above reflects the removal of the identifying material.

46. Defendants, and each of them, removed Plaintiff's name and identifying material from Plaintiff's designs in violation of this statute before publishing unauthorized copies to the public. Defendants, and each of them, further affixed packing, marketing material, and logos to Plaintiff's designs to attribute the unauthorized copies to one or more of the Defendants, and then distributed the unauthorized copies online and through live performance to the public.

47. The above conduct is in violation of the Digital Millennium Copyright Act and exposes Defendants, and each of them, to additional and enhanced common law and statutory damages and penalties, including in the form of Plaintiff's costs and attorneys' fees, pursuant to 17 USC § 1203 and other applicable law.

48. Plaintiff is informed and believes and thereon alleges that Defendants, and each of their, conduct as alleged herein was willful, reckless, and/or with knowledge, and Plaintiff resultantly seeks enhanced damage and penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

Against All Defendants and With Respect to Each Claim for Relief

a. That Plaintiff be awarded all profits of Defendant plus all losses of Plaintiff, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under 17 U.S.C. § 101, *et seq.*;

b. A disgorgement of profits and other damages arising from such infringement, pursuant to 15 U.S.C. § 1117, and award all damages called for therein;

c. An award of actual damages sustained by Plaintiff;

d. That Plaintiff be awarded its attorneys' fees as available under 17 U.S.C. § 101, *et seq.*, and/or 17 U.S.C. §1203,

e. That Plaintiff be awarded pre-judgment interest as allowed by law;

f. That Plaintiff be awarded the costs of this action;

g. That Plaintiff be awarded actual and punitive damages in an amount sufficient to deter and punish Defendant, on account of Defendant's willful violation of Federal, California, and common law; and

h. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper;

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Plaintiff demands a **jury trial** pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Respectfully submitted,

Dated: April 3, 2017 By: */s/ Scott Alan Burroughs*

Scott Alan Burroughs, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff
VALFRE, LLC